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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Christian Louboutin S.A., Christian Louboutin,	:
L.L.C. and Christian Louboutin,	:
	:
Plaintiffs/Counterclaim-Defendants,	:
	:
vs.	:
	:
Yves Saint Laurent America, Inc., Yves Saint	:
Laurent America Holding, Inc., and Yves Saint	:
Laurent S.A.S., et al.,	:
	:
Defendants/Counterclaim-Plaintiffs.	:
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Civil Action Number 11-cv-2381
(VM)
ECF Case

DECLARATION OF NATALIA VAISSIÉ

I, Natalia Vaissié, declare as follows:

1. I am the Director of Merchandising for Women's Accessories for the Yves Saint Laurent ("YSL") brand. I submit this Declaration on behalf of Yves Saint Laurent America, Inc., Yves Saint Laurent America Holding, Inc. and Yves Saint Laurent S.A.S. in opposition to the motion for a preliminary injunction of Christian Louboutin S.A., Christian Louboutin, L.L.C. and Christian Louboutin (together, "Louboutin"). I make this Declaration based on personal knowledge, my review of YSL records, and, where indicated, on information and belief.

Introduction

2. For nearly 50 years, YSL has been one of the most famous and prestigious fashion houses in the world. The YSL brand was founded by famed fashion designer Mr. Yves Saint Laurent and his partner, Mr. Pierre Bergé, in 1962. The fashion house, and specifically Mr. Saint Laurent, has been credited with popularizing the concept of ready-to-wear clothing lines, as well as a range of other innovations.

3. In addition to its seasonal shoe collections, YSL currently produces ready-to-wear clothing, jewelry, leather goods (which includes handbags), silks, and other accessories. YSL sells its products in various locations throughout the world, including Paris, New York, London and Tokyo.

4. YSL has long used red outsoles as a design feature on women's footwear. This use of red outsoles has nothing to do with Louboutin or any intent to mimic the look of Louboutin footwear. Indeed, it is my understanding that YSL used red outsoles on women's footwear as far back as the 1970s – before the Louboutin brand came into existence.

5. YSL uses red outsoles to give life to its own design concepts and consistent with its own venerated style traditions. In particular, most YSL footwear models with red outsoles have followed the “monochromatic” style, which is a time-honored YSL style tradition. YSL footwear models following the monochromatic style are offered in a line-up of colors that are

used on the entire shoe: the red version is all red, including a red outsole; the blue version is all blue, including a blue outsole; the yellow version is all yellow, and so on.



There is no particular emphasis on the outsole – to the contrary, the essence of the monochromatic style is to convey the visual impression of a solid block of color, with no part of the shoe standing out from the whole. There also is no particular emphasis on the red version. Rather, the style concept is to provide a line-up of colors that are within the color palette that YSL has defined for the particular season to be used across YSL’s entire collection (including not only footwear, but also ready-to-wear clothing and other accessories).

6. The four models of YSL footwear from the Cruise 2011 fashion season challenged in this lawsuit – the Tribute, the Tribtoo, the Palais and the Woodstock – are only the most recent manifestations of these established YSL style traditions. All four follow the monochromatic style. Two of these models (the Tribute and the Tribtoo) have been offered in shades of red (including red outsoles) for years. The Cruise 2011 shoes were available in a line-up of colors (including in different shades of red, as well as shades of other colors) that are based on a color palette developed by the YSL Creative Director, and which trace back to Mr. Yves Saint Laurent’s own evolution (from his first interest in design to his regular experimentation with colors in the early 1960s, and in particular to his regular use of all sorts of red colors since the mid-1960s).¹ This color palette was used to coordinate the entire YSL collection for the Cruise 2011 season, including not only footwear, but also ready-to-wear clothing and other accessories.

7. If YSL is enjoined from using red on the outsoles of its women’s footwear, it will be unable to give life to its own style traditions and its design options will be seriously constrained. I believe this would be an unfair and anticompetitive outcome, particularly because I am unaware of any harm caused to Louboutin by YSL’s use of red outsoles. Although YSL

¹ With no surprise, a whole subchapter of the *Yves Saint Laurent* book (La Martinière: Paris, 2010) is devoted to the color red, and YSL’s first advertising campaign using color featured a red dress.

has been using red outsoles on women's footwear products for years, I am unaware of a single instance in which any consumer, retailer or other person has expressed any confusion between YSL and Louboutin footwear.

My Background at YSL

8. I have worked for YSL since 2006. Throughout my tenure at YSL, I have had merchandising responsibility for YSL Women's Footwear. I began my employment with YSL as the Merchandising Manager for Women's and Men's Footwear. In 2008, I became Merchandising Manager for Women's Footwear, Jewelry and Silk. This meant that I dropped my responsibility for Men's Footwear but added responsibility for Jewelry and Silk, in addition to Women's Footwear. In 2009, I added responsibility for Leather Goods, becoming Merchandising Manager for Women's Footwear, Jewelry, Silk and Leather Goods. In April 2011, I was promoted to Director of Merchandising for Women's Accessories. This means I now have merchandising responsibility for all Women's Accessories, which includes Footwear.

9. Since I started with YSL, my merchandising responsibility for Women's Footwear has involved working with the design studio to develop each seasonal collection of footwear. The design studio has primary responsibility for the artistic or creative aspects of developing the collections – that is, for actually designing the shoes. My team provides commercial insights and guidelines to the design studio to help to define the structure of the collection. For example, for a given collection, my team might give guidelines for how many different footwear models should be included in the collection, how many should be casual models versus elegant models, how many should be sandals, how many should be boots, how many should be very high heels versus medium high heels versus flats, and so on. The merchandising guidelines are generally based on analyzing sales results from the previous

season, analyzing feedback from the showrooms and runway shows at which the models are displayed, and from other market intelligence. While my merchandising team brings more of a commercial perspective and the design studio brings more of an artistic perspective, the teams generally work collaboratively to develop seasonal collections that will both have commercial success and meet YSL's exacting and time-honored artistic standards.

10. As a result of my merchandising responsibilities, I am very familiar with the design process for women's footwear, and I am knowledgeable about the creation, development and design of virtually all YSL women's footwear models since 2006. I have worked closely with the head shoe designers at the design studio, including Francesco Russo, the creator of the Tribute and the Tribtoo designs, and Mario di Castri, the creator of the Palais and the Woodstock designs.

The Design Process at YSL

11. YSL produces four collections each year that correspond with the fashion seasons: a Pre-Fall collection, a Fall/Winter collection, a Cruise collection (sold in stores starting in early November), and a Spring/Summer collection.

12. Each seasonal collection for the YSL fashion house as a whole includes individual collections from each product line: ready-to-wear clothing, silks, footwear, leather goods, and other accessories. YSL ensures that all the individual collections are coordinated to achieve a cohesive look for the YSL collection as a whole.

13. The overall look of the collection is defined by YSL's Creative Director. At the beginning of each season, the Creative Director develops general design themes and color schemes to be represented across all of the YSL collections, including ready-to-wear clothing, footwear and others. To achieve a cohesive, coordinated look across all the collections, the

Creative Director develops a “color card” for the season, identifying specific shades of color that will be applied throughout YSL’s ready-to-wear clothing and accessories collections, including the women’s footwear collection. During the design process, the Creative Director then consults with the designers of each of the constituent collections to further facilitate coordination and cohesion across the line.

14. Generally, in the creative process, specific colors are not designated solely for the YSL footwear collection, let alone for the outsoles of any of the footwear models that will be produced. Rather, once the color card has been developed by the Creative Director, the design teams for the various product lines (including footwear) are responsible for creating their individual collections using the prescribed color palette. The color card for the Cruise 2011 season is attached hereto as Exhibit A.

15. An important aspect of YSL’s design process is reverence for the history of the brand. In designing contemporary collections, YSL repeatedly harkens back to earlier creative concepts. YSL often refers back to the creations of Mr. Saint Laurent himself for inspiration in designing new collections. YSL’s reverence for the brand’s history was reflected in at least two important ways in the Cruise 2011 collection:

a. First, as our “Women’s Shoes Product Training Guide” for the Cruise 2011 collection explains, the “color card” for the Cruise 2011 collection was inspired by Mr. Saint Laurent’s progressive and systematic interest in colors and red. This color palette – including the four different shades of red used variously for the Cruise 2011 Tribute, Tribtoo, Palais and Woodstock models – is referred to as a “quintessential YSL color palette” and part of the “DNA of the Brand.” Relevant excerpts from the document are attached hereto as Exhibit B.

b. A second important way in which the Cruise 2011 collection referenced the brand's history is use of the monochromatic style. The monochromatic style is also frequently referred to as part of the "DNA" of the brand. As detailed below, YSL has designed and sold monochromatic footwear in line-ups of quintessential YSL colors, including shades of red, numerous times over the years. The Cruise 2011 shoes are only the most recent example.

YSL's Historical Use of Red Outsoles

16. Red has been a significant color throughout YSL's history and, as such, has been frequently represented across YSL's various product lines. It is my understanding that YSL used the color red on the outsoles of women's footwear as far back as the 1970s. (Examples of YSL shoe models from the 1970s are shown at right.)

Since then, YSL frequently has designed, produced, distributed, marketed, sold and used footwear models with red outsoles. The design concept behind the majority of YSL models with red outsoles is a monochromatic look.



17. For those footwear models featuring non-monochromatic looks, the choice to use red on the outsole was similarly the result of purely aesthetic considerations. For example, a red outsole has been used as part of a "color blocking" concept (*see, e.g., ¶ 18(k), below*), to match a red print on the upper (*see, e.g., ¶ 18(e), below*), or to achieve the laquer-wear look associated with Chinese aesthetics (*see, e.g., ¶¶ 18(b)& 18(c), below*).

18. I understand that YSL personnel have reviewed records of YSL's historical footwear styles going back to 2003 to identify models of YSL footwear with red outsoles that were sold in the United States. I understand that this search identified the following models, among others, and the following details concerning such models:

a. The Pin-Up (as shown at right), featured in the Fall/Winter 2003 collection, was produced in various styles, as a classic pump, a sandal, and an ankle-strap pump, and in patent and crocodile leather materials. These all followed the monochromatic style and were available in a line-up of colors, including a shade of red called "carmine."

Pin-Up - Fall/Winter 2003



b. The Taï Taï (as shown at right) was featured in the Fall/Winter 2004 collection. It was unveiled to the fashion world at a runway show along with the rest of YSL's collections for the season. The collections unveiled were unified by an overall "Chinese" theme that was defined by YSL's Creative Director at the time, Tom

Taï Taï - Fall/Winter 2004



Ford. The ready-to-wear clothing line, the footwear line and the other collections all represented this unified theme by using common design elements (such as Chinese-inspired embroidery) and a common palette of colors, including a bright, vibrant red color. The Taï Taï footwear models were offered with uppers in various colors and prints in velvet, python, and leopard printed

leathers. On all of these, the color and patina of the heel, wedge and outsole were intended to evoke red lacquer-ware that is common to Chinese design.



I understand that Mr. Louboutin recalls attending a YSL runway show under Creative Director Tom Ford that was defined by an overall “Chinese” theme. I have confirmed by reviewing YSL records that the show he attended was in fact the one at which the Taï Taï was unveiled. A runway shot from that show, depicting a runway model wearing a YSL shoe with a red sole, is shown at left. Thus, it appears that Mr. Louboutin

personally attended the YSL runway show in 2004 at which YSL shoes with red outsoles were prominently displayed.

I understand that YSL records indicate that 1,760 pairs of the Taï Taï were ordered by retailers in the U.S. (including the YSL boutiques), making it one of YSL’s best-selling footwear models.

c. The Lotus (as shown below) was another Chinese-inspired model that was unveiled at the same runway show for the Fall/Winter 2004 collection. As with the Taï Taï, the Lotus was designed to complement the unifying theme of Chinese aesthetics that characterized the Fall/Winter 2004 collection. The Lotus design embroidered on the uppers of the shoes was meant to resemble the lotus flower, as frequently depicted on traditional Chinese shoes. The Lotus was produced in various styles, including as a closed-toe wedge pump, thigh-high wedge boot, ankle-strap pump, ankle-strap sandal, and slide-on sandal. All of these styles featured a wedge, heel and outsole in lacquered red.

The Tai Tai and the Lotus were the subject of a print advertising campaign, including in *W*, *Vanity Fair* and *InStyle* magazines. I understand that YSL records indicate that 1,622 pairs of the Lotus were ordered by retailers in the U.S. (including the YSL boutiques), making it another one of YSL's best-selling footwear models.

Lotus - Fall/Winter 2004



Kowloon - Fall/Winter 2004



d. The Kowloon (as shown at left), featured in the Fall/Winter 2004 collection, was produced as a wedge sandal and pump with shiny paillettes across the upper of the shoe. It was offered in a shade of red called "papavero" and featured a red lacquered sole like that used on the Tai Tai and Lotus models.

e. The Eva, featured in the Fall/Winter 2004 collection, was produced as an ankle-strap sandal, available with a velvet or silk upper in various deep colors, with the heel and sole in lacquer red. Due to its popularity, the Eva structure was reintroduced in the Cruise 2005 collection (as shown at right) with a silk printed upper featuring colored lips set against a white background with a coordinated outsole, including in a shade of red called "optic cherry." I understand that YSL records indicate that 695 pairs of the Eva in optic cherry were ordered by retailers in the U.S. (including the YSL boutiques), making it a strong seller for the YSL brand.

Eva - Cruise 2005



Saint Germain - Spring/Summer 2005



f. The Saint Germain (as shown at left)

has become one of YSL's iconic shoes. It was featured in the Spring/Summer 2005 collection and was offered as a high-heel pump, low-heel pump, ankle-strap Mary Jane, and flat loafer. It was produced in the monochromatic style in suede, in a

line-up of colors, including a shade of red called "rosso."

The Saint Germain was the subject of a print advertising campaign and also received editorial coverage in the United States in *Harper's Bazaar*, including in red. The Saint Germain was designated as one of the featured shoes for the Spring/Summer 2005 fashion show, and (as shown below) was worn by models walking the runway.



Séville - Spring/Summer 2005



g. The Séville (as shown at left), featured in the Spring/Summer 2005 collection, was produced as an ankle-strap Mary-Jane in shiny patent leather, including in a shade of red called "rosso laccato."

h. The Belle de Nuit (as shown at right), featured in the Pre-Fall 2006 collection, was produced as a classic pump with a prominent front buckle in patent leather material. The Belle de Nuit was offered in the monochromatic style in a line-up of colors, including a shade of red called “red.”

Belle de Nuit - Pre-Fall 2006



Cabaret - Pre-Fall 2008



i. The Cabaret (as shown at left), featured in the Pre-Fall 2008 collection, was offered as an open-toe T-strap pump and an ankle-strap sandal, each with jeweled embellishments across the toe. It was produced in patent leather in the monochromatic style in a line-up of colors,

including a shade of red called “rouge.”

j. The Charlie (as shown at right), featured in the Pre-Fall 2008 collection, was produced as a basic pump in the monochromatic style in a line-up of colors, including a shade of red called “rouge.”

Charlie - Pre-Fall 2008



Lili - Cruise 2009



k. The Lili (as shown at left), featured in the Cruise 2009 collection, was produced as a wedge pump and sling-back. It reflected a “color-blocking” design concept, with matching leather uppers and rubber outsoles in a line-up of colors, separated by the

wedge of the shoe made in cork material. The Lili was offered in a shade of red called “berry.”

l. The Divine (as shown at right), featured in the Fall/Winter 2009 collection, was produced in the monochromatic style in suede, patent, and eel leather in a line-up of colors, including a shade of red called “grenade.” The Divine was featured in a very memorable advertising campaign in the

Divine - Fall/Winter 2009



United States centered on a photograph of supermodel Christy Turlington completely nude except for her red YSL Divines (as shown at left). I understand that YSL records indicate that 608 pairs of the Divine in grenade were ordered by retailers in the U.S.

m. The Imperiale (as shown below), featured in the Fall/Winter 2009 collection, was produced as a semi-wedge pump in suede and crocodile leather, in the monochromatic style in a line-up of colors, including a shade of red called “grenade.”

Imperiale - Fall/Winter 2009



Designated as a featured shoe for the Fall/Winter 2009 fashion show, the Imperiale was worn in grenade by models walking the runway.

19. In sum, from 2003 through 2009 alone, YSL sold at least 13 different models (not including the older Tribute and Tribtoo models discussed below) of women’s high fashion designer shoes with red outsoles in the United States. These models have been sold in YSL

boutiques and major department stores and many of them received prominent exposure in ad campaigns, editorial coverage and/or runway shows.

The Challenged Footwear Models and the Cruise 2011 Collection

20. The Cruise 2011 collection included several models of footwear that were offered in the monochromatic style in a line-up of eye-catching colors. As noted, the color card for the season was developed by the Creative Director for the entire YSL collection. As also noted, the color card for the season in part traces back to Mr. Saint Laurent's own explorations with color decades earlier. This color palette, which has been referred to as a "quintessential YSL color palette" and part of the "DNA of the Brand," included four different shades of red. These shades of red were used to coordinate the entire YSL collection for the season, including not only footwear, but also ready-to-wear clothing and other accessories.



21. I understand that Louboutin has challenged four models of women's footwear that were included in the Cruise 2011 collection: the Tribute, the Tribtoo, the Palais, and the Woodstock.

22. I also understand that Louboutin has alleged that YSL just began selling the challenged shoes in January 2011. That is incorrect. As an initial matter, sales of the Cruise 2011 shoes started in early November 2010. By January 2011, sales of the collection were substantially underway. In addition, the Tribute and the Tribtoo styles have both been sold in the monochromatic style, including in red, for years. Moreover, I understand that YSL records indicate that, in the U.S., sales of those red models in past seasons were greater than sales in the Cruise 2011 season.

Tribute

23. The Tribute is one of YSL's iconic and best-selling footwear models. It was first created in the Mary-Jane style for the runway show for the Spring/Summer 2007 collection by Francesco Russo, who was then head of YSL's design studio for women's footwear. For the Cruise 2008 season, Mr. Russo designed a sandal version of the Tribute. Mr. Russo used YSL's venerated monochromatic design concept for the Cruise 2008 Tribute sandal, offering the shoe in a line-up of colors including a shade of red called "deep red," as shown below.

Tribute - Cruise 2008



24. The creation and development of the red Tribute sandal for the Cruise 2008 season had nothing whatsoever to do with Louboutin. The idea was to take the Tribute structure that had been created by Mr. Russo and received a hugely favorable response, change the upper to turn it into a sandal, and, consistent with a venerable design tradition at YSL, offer it in the monochromatic style in a line-up of eye-catching colors from that season's color card. The fact that the outsole on the red version was red reflects only (1) that we wanted to offer the Tribute sandal in the monochromatic style and (2) that certain shades of red were part of the color card used for achieving a coordinated look across the entire YSL collection for the season.

Tribute - Fall/Winter 2009



25. The Tribute sandal was offered again in the monochromatic style, including in red, in the Fall/Winter 2009 season, as shown at left. I understand that Mr. Louboutin was shown an example of an older Tribute sandal (identified as Exhibit 42 in his deposition) and that he confirmed his belief that it, like the Cruise 2011 version, infringes his red sole design; I have reviewed an image of that model and it appears to be a red Tribute from the Fall/Winter 2009 season.

26. In Cruise 2011, the Tribute sandal was offered in a line-up of colors, including three shades of red called “flame,” “lobster” and “fragola/rosa.” I understand that YSL records indicate that the “flame” was the best-selling version, with 830 pairs ordered by U.S. retailers (including YSL boutiques). I also understand that YSL records indicate that only 54 pairs of the “fragola rosa” (also known as the “Stingray” version) were ordered by U.S. retailers.

27. For the Cruise 2011 season, I understand that YSL records indicate that U.S. retailers (including YSL boutiques) ordered 1,084 pairs of Tribute sandals with red outsoles. In

Cruise 2008, when the monochromatic red Tribute sandal was first introduced, U.S. retailers (including YSL boutiques) ordered 1,078 pairs with red outsoles.

Tribtoo

28. The Tribtoo is another iconic and best-selling YSL model created by Mr. Russo. It was first introduced on the runway for the Fall/Winter 2008 fashion show, where it was favorably received. Since its introduction in 2008, the Tribtoo has been offered in various materials (*i.e.*, calf's leather, patent leather), styles (closed-toe pump, sling-back, boot) and colors to correspond with the color scheme of the overall YSL collection each season.

29. Under the direction of Mr. Russo, the Tribtoo was first produced in the monochromatic style in a line-up of colors, including a shade of red called "dark lipstick red," for the Pre-Fall 2009 collection, as shown below. The Tribtoo in dark lipstick red was part of a special order for the launch of YSL's e-commerce website in the United States.

Tribtoo - Pre-Fall 2009



The Tribtoo design was introduced again in the Fall/Winter 2009 season in the monochromatic style in a line-up of colors, including in a shade of red called "grenade." I understand that Mr. Louboutin was shown an example of an older Tribtoo (identified as Exhibit 40 in his deposition) and that he confirmed his belief that it, like the

Cruise 2011 version, infringes his red sole design; I have reviewed the image of that model and it appears to be the dark lipstick red Tribtoo from the Pre-Fall 2009 season.

30. In Cruise 2011, the Tribtoo was offered in a line-up of colors, including in shades of red called "rouge," "flame," "fragola/rosa," and "lobster."

31. As with the Tribute, the creation and development of the red Tribtoo had nothing whatsoever to do with Louboutin. Again, the idea was to take a structure that had been created by Mr. Russo and received a favorable response, and, consistent with a venerable design tradition at YSL, offer it in the monochromatic style in a line-up of eye-catching colors from that season's color card. Again, the fact that the outsole on the red version was red reflects only (1) that we wanted to offer the Tribtoos in the monochromatic style and (2) that certain shades of red were part of the color card used for achieving a coordinated look across the entire YSL collection for the season.

32. For the Cruise 2011 season, I understand that YSL records indicate that U.S. retailers (including YSL boutiques) ordered only 75 pairs of Tribtoos with red outsoles. By contrast, in Pre-Fall 2009, when the monochromatic red Tribtoo was first introduced, U.S. retailers (including YSL boutiques) ordered 507 pairs with red outsoles – over 500% more than in Cruise 2011.

Palais and Woodstock

33. For the Cruise 2011 collection, YSL introduced two new models: the Palais and the Woodstock. Like the Cruise 2011 Tribute and Tribtoo, the new models were also offered in a monochromatic style. Both were available in a shade of red called “rouge.” The Palais was also offered in a shade of red called “lobster.”

34. Both were created by women's footwear designer Mario Di Castri. They reflect his creative decision to follow the monochromatic effect applied in numerous models by his predecessors, including Mr. Russo. The fact that the outsoles on the red versions were red reflects only (1) that we wanted to use the monochromatic style for footwear in the Cruise 2011

season and (2) that certain shades of red were part of the color card used for achieving a coordinated look across the entire YSL collection for the season.

35. The Palais has been successful, as I understand that YSL records indicate that 388 pairs in red have been ordered by YSL retailers in the United States (including YSL boutiques). I understand that YSL records indicate that the Woodstock has been a lesser seller, with only 84 pairs of the red version ordered by retailers in the United States.

No Copying of Louboutin

36. To my knowledge, throughout all of the years in which YSL has produced shoes featuring red outsoles, Louboutin's use of a red outsole has never been mentioned in discussions amongst either the creative or merchandising teams as a design element that should be copied.

37. I believe (and, to my knowledge, others at YSL believe) that Louboutin's shoes are visually striking because the bright, laquered red outsole contrasts sharply against the rest of the shoe, particularly the upper, as shown at right. In this way, Louboutin's red outsole stands out as a "signature" element.

38. YSL has never used a red outsole in this way. On its monochromatic shoes – including the Tribute, Tribtoo, Palais and Woodstock – the outsoles do not stand out at all. The essence of the monochromatic look is that no part of the shoe stands out more than any other. Rather, the red outsole is used precisely because it blends in with the color of the rest of the shoe. On footwear models with red outsoles that do not follow the monochromatic style, the use of a red outsole still has not been a signature element that stands out, but rather has always been integrated into a visual concept for the entire shoe: to reflect the "color-blocking"



style, as in the case of the Lili (*see* ¶ 18(k), above); to match a print on the upper, as in the case of the Eva (*see* ¶ 18(e), above); or to give an overall “Chinese” effect, as in the case of the Tai Tai and Lotus (*see* ¶¶ 18(b) & 18(c), above).

39. YSL also does not even use the same shade of red used by Louboutin on its outsoles. Presumably, if we had wanted to copy Louboutin’s red sole design we would have used the single shade of red that he apparently uses on all his shoes. We have not done that. In fact, we have used a wide variety of reds. In the Cruise 2011 collection alone, the shoes challenged in this lawsuit used four different shades of red: lobster, flame, fragola/rosa and rouge. Past models of the Tribute and the Tribtoo have been offered in additional shades of red: dark lipstick red, grenade and deep red. The specific shade of red used on the outsole of each model was always chosen to correspond most closely with the color of the rest of the shoe. None of these YSL shoes use a glossy, lacquered finish similar to Louboutin’s.

40. I understand that Louboutin has attached to its legal papers certain “Merchandising Grids” prepared by my team that Louboutin contends show that we “sought to dress [our shoes] in Louboutin’s signature mark” and “deliberately sought to copy [Louboutin’s] Red Sole Mark.” Pl. Mem. at 20 (citing YSL Merchandising Grids for the Pre-Fall 2008, Pre-Fall 2009 and Pre-Fall 2010 collections, attached as exhibits B-D of the Declaration of Harley I. Lewin).

41. Louboutin egregiously mischaracterizes both the substance and the intent of the documents. For each season, my team prepares the Merchandising Grid to give the design team guidelines for structuring the seasonal collection from a commercial perspective. We frequently include examples of footwear by other designers to illustrate a point. For example, for Pre-Fall 2010, my team advised the design studio that we thought there was market demand for boots in a

supply material that would “fall” on the ankle when a woman wears them. In our Merchandising Grid for Pre-Fall 2010, my team provided three examples of such boots to illustrate the point. One of these was a Louboutin boot; the other two were not. Thus, the reference to Louboutin in that document (attached as exhibit D to Mr. Lewin’s declaration) had nothing to do with the red sole. It certainly does not show that we set out to copy it. We regularly include examples of third-party footwear models in this manner, from designers as varied as Sergio Rossi, Jimmy Choo, Prada, Dior, Miu Miu, Frye and Hermès, alongside examples of past YSL styles that also demonstrate the point we are trying to make.

42. The Pre-Fall 2008 and Pre-Fall 2009 Merchandising Grids discussed the suggestion of developing a “strong visual code” for the YSL brand. The documents cited the Louboutin red sole as an example of a “strong visual code,” but other examples of strong visual codes used by Lanvin and Louis Vuitton also were cited to illustrate the point. The point was not to copy the visual codes associated with Louboutin, Lanvin or Louis Vuitton. Rather, the point was self-evidently the opposite: to develop a unique and different code that would be associated with the YSL brand. The YSL design team has experimented with developing and incorporating signature aesthetic elements into our products, including making stylized use of the Y shape from our YSL logo and using ornamental jewelry as a signature embellishment.

No Confusion

43. Throughout my tenure at YSL, I have not been aware of a single instance of consumer confusion between the shoes of Louboutin and YSL shoes with red outsoles. To my knowledge, prior to this litigation, no consumer, retailer or any other person or entity has ever remarked on any similarities between the Louboutin and YSL shoes stemming from the use of

red outsoles. Moreover, I understand that a search of records by YSL personnel indicates that we have never received any indication of consumer confusion.

44. In my professional opinion as someone deeply involved in the merchandising of high fashion women's footwear for nearly ten years, I think it is highly implausible that any consumer would be confused about the source of YSL's footwear because of a red outsole. These are very expensive products, generally costing around \$800 or more per pair. Our consumers are sophisticated and, in my experience, exercise great care, generally examining the shoes and trying them on, before making a purchase. The vast majority of our sales in the U.S. are through either our eponymous boutiques, which sell only YSL products, or through dedicated sections of high-end department stores, in which our products are kept segregated from shoes of other designers and often placed behind YSL signage and promotional materials (*see, e.g.*, Exhibit C). Internet sales are either through our own YSL website or on retailer websites under the YSL brand name (*see, e.g.*, Exhibit D). The shoes themselves all feature the YSL logo prominently on the insole and the "Yves Saint Laurent" name on the outsole. Once a purchase is made, the shoes come in a box bearing the "Yves Saint Laurent" name prominently.



Retailers' Return of YSL Inventory

45. The Cruise collection is first offered for sale in the U.S. department stores and YSL boutiques at the beginning of November each year. By the end of March, sales are

substantially complete (though due to reorders and other reasons there may be some continuing sales past that date). Thus, the Cruise 2011 shoes hit the stores in early November 2010 and were substantially sold through by the end of March 2011.

46. Between February and March 2011, several retailers – including Saks Fifth Avenue, Neiman Marcus, Barneys New York and Bergdorf Goodman – refused to continue selling YSL footwear featuring red outsoles and returned their inventory to YSL. I understand that these returns followed communications between the retailers and Louboutin. I also understand that the models of footwear that the retailers returned included not only the models challenged by Louboutin in this case, but also additional models that Louboutin has never challenged, such as the Gipsy sandal which features a red platform and outsole.

47. Fortunately, by the time these returns occurred, we were already well into selling through the Cruise 2011 collection. I understand that we also were able to re-deploy to our boutiques much of the inventory returned by the retailers. We did, however, suffer some lost sales as well as storage and other costs as a result of the inventory returns.

* * * * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 9 day of July 2011.



Natalia Vaissie